

**Applicant:** East Mountain Partners LLC

**Agent:** Larry M. Griego

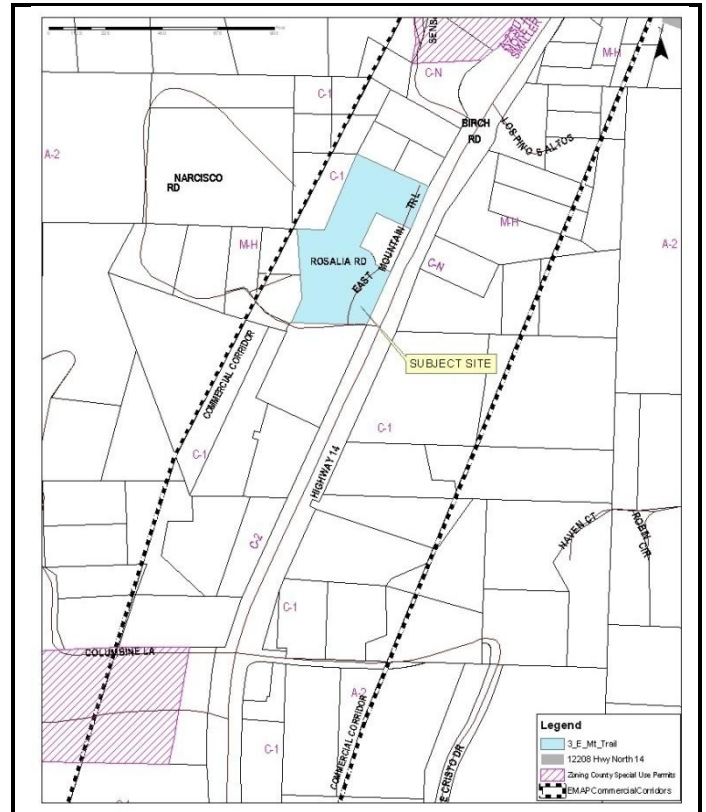
**Location:** 3 East Mountain Trail, Cedar Crest

**Property Size:** Approximately 4.37 acres

**Existing Zone:** C-1

**Proposed Request:** Special Use Permit for a Specific Use for a Flea Market

**Recommendation:** Deferral



**Summary:** The applicant is requesting a Special Use Permit to operate a Flea Market on Saturdays and Sundays on a vacant lot off of Highway North 14.

**Staff Planner:** Mari Simbaña, Program Planner

**Attachments:**

1. Application
2. Land Use and Zoning Map
3. Letters from Neighbors
4. Site Plan (Commissioners Only)

Bernalillo County Departments and other interested agencies reviewed this application from Feb. 3, 2010 to March 15, 2010.

Agency comments were used verbatim in preparation of this report, and begin on page 11.

**AGENDA ITEM NO.: 17**  
**County Planning Commission**  
**April 7, 2010**

CSU-20100011      Larry M. Griego, agent for East Mountain Partners LLC, requests approval of a Special Use Permit for Specific Use for a Flea Market on Tract 1, The Village of Bella Vista, Unit 2, located at 3 East Mountain Trail, zoned C-1, and containing approximately 4.37 acres. (G-29)

**AREA CHARACTERISTICS AND ZONING HISTORY**  
**Surrounding Zoning & Land Uses**

<b>Site</b>	<b>Zoning</b>	<b>Land Use</b>
	C-1	Vacant
<b>North</b>	C-1	Vacant
<b>South</b>	C-1	Triangle Shopping Center
<b>East</b>	Right-of-Way	NM Highway 14
<b>West</b>	C-1 M-H	Vacant Occupied, Single Family

## **BACKGROUND:**

### **The Request**

The purpose of the request is to provide a permitted space for vendors to sell a variety of new and used goods. The subject site is the former location of the Bella Vista Restaurant that was demolished in May 2008. A substantial asphalted area remained.

The site is approximately 4.37 acres and is vacant. The site plan specifies 30 customer parking spaces, including handicapped parking on the extensive paved area and outlines a general area on the west side of the lot as the "selling area". It also shows three portable bathrooms toward the middle of the site and a dumpster on the southwest corner. The application indicates that trash will be collected at the end of each day that the swap meet is in operation.

### Request Justification

The applicant believes that the intended use will be more advantageous to the community. It will, "offer residents of the East Mountain a venue to recycle items for reuse by others."

### **Surrounding Land Use and Zoning**

The site is west of North Highway 14. Both lots immediately south of the site is zoned C-1, and is the location of the Triangle Grocery store. West of that is a commercial center housing various establishments that provide goods and services to the community, including a restaurant. There is a lot to the west zoned M-H and is occupied residential. There are also C-1 zoned lots to the west that are vacant. The lot bordering the subject site to the north is zoned C-1 and is vacant. West of North Highway 14 are several lots zoned M-H as well as one zoned. South of that there are several lots zoned C-1.

## **APPLICABLE PLANS AND POLICIES:**

### **Albuquerque/Bernalillo County Comprehensive Plan**

**Policy 3** The stated Goal of the Rural Area is "to maintain the separate identity of Rural Areas as alternatives to urbanization by guiding development compatible with their open character, natural resources, and traditional settlement patterns." The following includes applicable policies:

**Policy 3.a.** of the Rural Area Goal states that "higher density development may occur at appropriate locations. Rural Area density patterns shall be more specifically defined through lower rank planning. Each higher density area is to be controlled by site development plan and is to be located well away from other such higher density areas."

**Policy 3.b** states that "Development in Rural Areas shall be compatible with natural resource capacities, including water availability and capacity, community and regional goals and shall include trail corridors where appropriate."

**Policy 3.f** states that “Development shall be carefully controlled in the East Mountain Area to prevent environmental deterioration, and to be compatible with the resource base and natural recreational and scenic assets.”

**Policy 3.g** states that “the following shall guide industrial and commercial development in the Rural Areas.”

- Small-scale, local industries, which employ few people and may sell products on the same premises, are the most desirable industrial use.
- Neighborhood and/or community-scale rather than regional scale commercial centers are appropriate for rural areas. Strip commercial development should be discouraged and, instead, commercial development should be clustered at major intersections and within designated mountain and valley villages.”

**Policy 6** Economic Development goal is, “to achieve steady and diversified economic development balanced with other important social, cultural, and environmental goals.”

**Policy 6.a** states that, “New Employment opportunities which will accommodate a wide range of occupational skills and salary levels shall be encouraged and new jobs located convenient to the areas of most need.”

**Policy 6.b** states that, “Development of local business enterprises as well as the recruitment of the outside firms shall be emphasized.”

**Policy 6.g** states that, “Concentrations of employment and Activity Centers should be promoted in an effort to balance jobs with housing and population and reduce the need to travel.”

## **East Mountain Area Plan Goals and Objectives**

### *General Land Use – 1*

#### Goal

- Protect the property rights of property owners while ensuring the health, safety, and welfare of all inhabitants.

### *Visual Resources – 4*

#### Goal

- Maintain and improve the existing visual quality of the East Mountain Area.

#### Objective

- Recognize the natural and visual environment, particularly features unique to the East Mountain Area as a significant determination in development decisions.

*Economic And Commercial Development – 9*

Goal

- Achieve steady and diversified economic development balanced with other important social, cultural, and environmental goals.

Objectives

- Promote sound economic development that includes small-scale, local businesses.
- Provide new employment opportunities for area residents which will accommodate a wide range of occupational skills and salary levels.
- Promote tourism with careful attention to the potential for impacts of tourism on the East Mountain Area residents, rural character, and environment.

Policies

- 9.1 Commercial development shall occur in commercial corridors and nodes identified through an economic development study, sector plan, or master plan approved by Bernalillo County.
- 9.2 Prohibit new Special Use Permits for commercial and manufacturing that would be equivalent to M-2 zoning.
- 9.3 New commercial development shall be of an appropriate scale to meet the needs of the area residents and not degrade the environment.
- 9.4 Encourage small-scale business to develop with the potential for providing local employment.

Possible Techniques

- Establish commercial corridors and nodes to allow for the location of neighborhood-scale businesses that generate jobs and provide needed goods and services to EM residents while maintaining rural character.
- Focus light industrial and commercial development in selected areas with adequate utilities and transportation access and set apart from any existing or future residential neighborhoods or other incompatible land uses.
- Reserved portions of the community strictly for commercial activity to accommodate a variety of wholesale, retail, service and offices uses where the highest traffic volumes and greatest utility demands can be served and more extensive signage and outdoor display of materials will be expected and permitted.

p. 119

Rural Character

The most important issue identified by respondents on the 2003 questionnaire was the retention of rural character, confirmed by responses to other Survey questions. The vision of

the East Mountain Area residents is to maintain this rural character. This is the focus of discussion in the Community Vision section which can be found in Appendix G. Rural character is defined by natural landscape, open spaces, undisturbed ecosystems, quietness, views of the landscape and the sky, limited traffic, large lots, privacy, and small-scale local businesses.

### **Bernalillo County Zoning Ordinance**

**Resolution 116-86** defines criteria for evaluating a Zone Map changes and Special Use Permit applications.

The following policies for deciding zone map changes and Special Use Permit applications pursuant to the adopted Bernalillo County Zoning Ordinance.

- A. A proposed land use change must be found to be consistent with the health, safety and general welfare of the residents of the County.
- B. The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a land use change.
- C. A proposed land use change shall not be in significant conflict with adopted elements of the Comprehensive Plan or other Master Plans and amendments thereto including privately developed area plans which have been adopted by the Board of County Commissioners.
- D. Stability of the land use and zoning is desirable; therefore, the applicant must provide a sound justification for land use change. The burden is on the applicant to show why the change should be made.
- E. The applicant must demonstrate that the existing zoning is inappropriate because:
  - 1. An error in the original zone map.
  - 2. Changed neighborhood conditions, which justifies a change in land use or
  - 3. That a different use category is more advantageous to the community as articulated in the Comprehensive Plan or other land use plans as adopted by the Board of County Commissioners.
- F. A land use change shall not be approved where some of the permissive uses in the land use change would be harmful to adjacent property, the neighborhood or the community.
- G. Location on a collector or major street is not itself sufficient justification of apartment, office, or commercial zoning.
- H. A zone change request which would give a zone different from the surrounding zoning to one small area, especially when only one premises is involved, is generally called a "spot zone." Such a change of zone may be approved only when:

1. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or
  2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones, because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.
- I. A zone change request, which would give a zone different from the surrounding zoning to a strip of land along a street, is generally called a “strip zoning.” Such a change of zone may be approved only when:
1. The change will clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or
  2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones, because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.

#### **Section 18. Special Use Permit Regulations.**

- A. By Special Use Permit after receipt of a recommendation from the Bernalillo County Planning Commission, the Board of County Commissioners may authorize the location of uses in any zone in which they are not permitted by other sections of this ordinance; the Bernalillo County Commission may likewise authorize the increase in height of buildings beyond the limits set by previous sections of this ordinance. With such permits, the Bernalillo County Commission may impose such conditions and limitations as it deems necessary:
1. To ensure that the degree of compatibility of property uses which this section is intended to promote and preserve shall be maintained with respect to the special use on the particular site and consideration of existing and potential uses of property within the zone and the general area in which the use is proposed to be located;
  2. To ensure that the proper performance standards and conditions are, whenever necessary, imposed upon uses which are, or which reasonably may be expected to become, obnoxious, dangerous, offensive or injurious to the health, safety, or welfare of the public, or a portion thereof, by reason of the emission of noise, smoke, dust, fumes, vibration, odor, or other harmful or annoying substances;
  3. To preserve the utility, integrity and character of the zone in which the use will be located, without adversely affecting adjacent zones; and
  4. To ensure that the use will not be or become detrimental to the public interest, health, safety, convenience, or the general welfare.

B.32.a

(Office/Commercial) In certain situations based on unique conditions the owner may apply for any of the specific uses set forth in Sections 12, 13, 14, or 15 of this Ordinance. The special use for a specific use (office/commercial) may be granted if the owner/applicant proves by clear and convincing evidence that: (1) unique conditions exist that justify the request and (2) there is substantial support from neighborhood residents (or owners of property) within 200 feet of the site for the proposed special use.

**Section 19: Landscaping and Buffer Landscaping Regulations:**

Where a nonresidential zone which is hereafter developed for a business purpose abuts a residentially zoned property, special buffer landscaping is required to minimize noise, lighting and sight impact of the nonresidential activities in the residential area.

- I- Landscaping and buffer landscaping will be required in all zones for office, commercial, industrial, and multifamily residential uses; R-1, A-1, A-2 and M-H residential uses are exempt.
  - 1. Sites of one acre or less:
    - a. There shall be a landscaped setback along all streets of no less than ten feet.
    - b. There shall be a landscaped buffer of six feet between single-family residential uses and office, commercial, industrial, and multifamily residential uses.
    - c. Fifteen percent of all paved areas shall be landscaped. The landscaped setback shall contribute toward this requirement.
  - 2. Sites one acre and up to five acres. There shall be a landscaped setback along all streets of no less than 15 feet. All other requirements same as 1.b. and 1.c. above.
- I- In a nonresidential zone, a solid wall or a solid fence at least six feet high shall be erected on sides abutting a single family residential use, except for those sides abutting public right-of-way.
- E. Landscaping which dies shall be replaced by the property owner who is obligated to provide it as expeditiously as possible, but in no case longer than 30 days after notification. If the 30-day period falls at a time of the year when planting of landscaping is inadvisable, a waiver may be granted by the Zoning Administrator to allow planting at the earliest possible time. The waiver and date of the planting deadline shall be recorded by the County Zoning Office.
- G. Parking spaces within a parking lot shall be no more than 50 feet from a tree.
- H. Nonconforming Landscaping. Premises which, when they were developed, were not required to be developed in accordance with the Landscaping and Buffer Landscaping Regulations Section of this ordinance, shall be made to conform with this regulation within two years due to the amendment of the map or text of this ordinance.



## ANALYSIS:

### Surrounding Land Use and Zoning

The site is west of North Highway 14 and surrounded mostly by C-1 zoned properties. The lots to the north and west (zoned C-1) are vacant and the lot immediately south of the site is the location of the Triangle Grocery store. West of that is a commercial center. There is a lot to the west zoned M-H and is occupied residential.

### Plans

*Albuquerque/Bernalillo County Comprehensive Plan* Policy 3 states that the, goal of the Rural Area is “to maintain the separate identity of Rural Areas as alternatives to urbanization by guiding development compatible with their open character, natural resources, and traditional settlement patterns.” The *East Mountain Area Plan* Economic and Commercial Development Goal is to, “Achieve steady and diversified economic development balanced with other important social, cultural, and environmental goals.”

### Zoning Ordinance

As a permissive use, Flea Markets are allowed in the M-1 and M-2 zones and as a conditional use in the C-2 zone.

Although the applicant cites, “a different use category is more advantageous to the community,” he does not elaborate the reasoning behind this justification or unique conditions beyond it being a paved vacant lot. The adjacent neighbor to the south, Rita Liebling, owner of the Triangle Grocery store, has submitted a letter supporting the request. In addition several other residents have sent letters of support.

### Agency Comments

There were no adverse comments regarding this request. Public Works staff is requesting a Traffic Scoping Report. New Mexico Department of Transportation staff requires current access permits and also comments that requested use may necessitate driveway improvements. The Zoning Administrator expresses the need for additional detail regarding the separation of the parking and vending areas. There may not be enough parking space to accommodate the corresponding “selling area” square footage as shown on the Site Plan. Comments also include the requirement for landscape setbacks along portions of property adjacent to streets and a solid wall or fence to be provided as a buffer to the adjacent M-H property. Fire vehicles will need to be accommodated through unobstructed emergency access isles. The Public Service Company of New Mexico states, that there is, “an existing distribution line adjacent to Highway 14 and on this property.” It is the applicant’s responsibility to investigate how the request will affected this situation. Environmental Health has compliance requirements prior to and during operation.

### Analysis Summary

Zoning	
Resolution 116-86	The applicant believes the request would be more advantageous to the community.

Section B.32.A	There is substantial neighborhood support for the use.
<b>Plans</b>	
Comprehensive Plan	This request is consistent with Policy 3 because it maintains the rural identity of the area and is compatible with the East Mountain Area Plan (Policy 3.a.)
East Mountain Area Plan	The request is consistent with Policy 9 in that it encourages small scale business that provides needed goods and services to the community.
<b>Other Requirements</b>	
Zoning Administrator	There are buffer and landscape requirements due to an M-H zoned lot adjacent to the subject site. More detail is needed regarding the separation of parking from vending area.
Public Works	The applicant must complete a Traffic Scoping Report.
Fire Department	Emergency access aisles must be provided.
NMDOT	Applicant must obtain driveway access permit.
PNM	Applicant must determine if existing utility easements cross the property and abide by any conditions or terms of those easements to avoid conflict and ensure safety of the public.

## Conclusion

Although road side vending is known to occur, there is no zoning that allows it. Apparently, there is a great interest in buying and selling in a “Swap Meet” setting but until now there has not been an attempt to formalize this activity onto one site through a zoning process. The activity would provide an organized means of buying and selling new and used goods. While staff believes the desired use appears to be compatible with the surrounding community, there are some outstanding questions. Neither the application nor site plan give an idea of the total number of vendors there may be, nor elaborate on whether the selling will be done from the back of trucks or stalls, for example. The selling space will affect the parking area needed as well as traffic impact, safety, and circulation, especially for fire vehicle access. A deferral of this request would allow the applicant to further address Resolution 116-86 as well as provide more specific information on the area of use.

## RECOMMENDATION:

Staff recommends Deferral of the request.

Mari Simbaña  
Program Planner

## **BERNALILLO COUNTY DEPARTMENT COMMENTS**

Zoning Administrator:

3/12/10

A flea market (or auction yard) is first listed as a conditional use in the C-2 zone [ref. Sec. 15.B.3.a.(3)], provided:

- the off-street parking areas are clearly separated from the sales area;
- ingress and egress to the parking areas is directly to arterial or collector streets; and
- where sales activities are conducted out of doors, the area must be enclosed by a solid wall or fence at least six feet high on all sides facing or abutting A-1, A-2, R-1, R-2 and M-H property.

As the outdoor sales activity is proposed for the west side of the site, a solid wall/fence at least 6 feet in height is required along the W/SW sides of the property. Additional details of the method used to separate the parking areas from the sales area should also be included.

### **LANDSCAPING**

Based on the overall size of the subject property, a landscaped setback of at least 15 feet in depth is required along all portions of the property adjacent to a street (Sec. 19.A.3.), including the entire length of the site along North 14 and both sides of Narcisco Road. The provided landscaping shall consist of a variety of trees, shrubs, and vegetation to create a visually opaque buffer.

The ordinance requires that a landscaping plan outlining all proposed areas to be covered with impervious materials, proposed planting beds and vegetative ground cover areas be provided. The plan is required to indicate the location, size, and species of all existing and proposed trees, shrubs, vegetation and ground cover. Trees must be at least one-and-one-half inches in caliper measured at two feet above grade. One tree is required for each 30 feet of frontage. Shrubs must be at least 5 gallon minimum. A minimum of 75 percent of the landscape buffer areas must be maintained with live planting materials.

Properties located within the unincorporated area of Bernalillo County are subject to applicable county water conservation restrictions. The specific type of landscaping to be used is subject to review/inspection by the Public Works Division. Any changes to the landscaping as required by the Public Works Division are subject to additional review and approval of the Zoning Administrator, and must be consistent with the standards of the zoning ordinance.

A solid wall/fence at least 6 feet in height is required along the W/SW sides of the property, as referenced above related to the specific requirements for the use (adjacent property is zoned M-H). Elevation drawings of this feature are recommended.

### **PARKING**

Section 21.A.20. requires that a flea market provide one parking space for each 200 square feet of sales area, plus one parking space for each separately rented sales space.

Additional details should be provided to specify the sales area, but a cursory review of the material appears to indicate that the property will be severely deficient for this standard. Similarly, existing off-street parking spaces that are required for existing development and buildings on the property cannot be calculated or included with the separate space requirements associated with the flea market.

Environmental Health:

3/15/2010

1. Food sales must be done so in accordance with BCEH requirements. Concessions must acquire and maintain a food permit and comply with any and all regulations as such
2. Portable restrooms must be placed on-site and maintained by a licensed wastewater transporter. At minimum, one male, one female and one handicap accessible unit must be on site at times of public occupancy. Appropriate adjustments must be made in response to crowd size in order to adequately address health and sanitation needs.
3. Any water supplies on-site must be permitted and approved by BCEH and NMED, if applicable.

Zoning Department Manager:

3/5/10

Based on the above comments there is no adverse comments at this time.

Building Department Manager:

No adverse comments.

Public Works:

DRAN: 3/8/2010

No adverse comment.

DRE: 3/15/2010

- Traffic Scoping Report required.
- Need letter from NMDOT concerning access driveways.

Fire Department

3/15/10

- There shall be emergency access asiles throughout the selling area, to allow emergency vechile access.
- Required access: Fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction.
- The required width of a apparatus access road shall not be obstructed in any manner, including parking of vehicles during construction and/or occupancy.
- Extinguishers shall be made available for use throughout the selling area.

-Extinguishers shall be suitable for the anticipated character of the fire, the construction and occupancy of the individual property or premises, the vehicle or hazard to be protected and the ambient-temperature conditions.

Parks & Recreation:

2/25/10

Informational Comment: There is an existing paved, multi-use trail on the east side of NM 14. The East Mountain Trails and Bikeways Master Plan also proposes a soft-surface trail within the NM-14 right-of-way.

Sheriff's:

No comment received

**COMMENTS FROM OTHER AGENCIES**

MRGCOG:

3/1/10

For informational purposes, NM 14 has a functional classification of rural major collector as per the Current Roadway Functional Classification System map.

AMAFCA:

3/12/10

No comment.

City Planning Department:

No comment received

Transportation Division

No comment received

Municipal Development:

No comment received

City Public Works:

Transp. Planning: No comment received

Transp. Development: 3/4/10

No adverse comments. (Salgado)

City Transit:

3/3/10

No comments

ABCWUA Utility Development Section  
No comment received

City Environmental Health:  
No comment received

City Open Space:  
No comment received

NM Department of Transportation  
3/2/10

It appears this property abuts NM 14. Any new access (access permits are not transferrable from owner to own) will have to be coordinated with NMDOT District 3. It appears this development may increase the number of trailers and large trucks accessing the property. Therefore, it may be necessary to provide improvements to the driveway (left turn lanes, right turn lanes) to maximize safety.

Albuquerque Public School:  
3/12/2010  
This will have no adverse impacts to the APS district.

Public Service Company of New Mexico  
3/1/10

PNM has an existing distribution line adjacent to Highway 14 and on this property. As a condition, it is the applicant's obligation to determine if existing utility easements cross the property and to abide by any conditions or terms of those easements to avoid conflict and ensure safety of the public.

NM Gas  
2/4/10  
No comment received

Village of Tijeras:  
No comment received

**NEIGHBORHOOD ASSOCIATIONS:**  
East Mountains District 5 Coalition